



**Revenue Ruling
No. 06-016**

September 25, 2006

Individual Income Tax and Corporation Income Tax

**Frequently Asked Questions Concerning the
Motion Picture Investor Tax Credit**

The purpose of this revenue ruling is to provide guidance to persons seeking to earn, claim, or transfer the Motion Picture Investment Tax Credit earned by investment in a “motion picture production company” producing a “state-certified production.” Below is a common fact pattern that illustrates the use of the Investor Tax Credit. After the fact pattern, this ruling will address questions taxpayers frequently ask the Department concerning specific aspects of the Investor Tax Credit.

STATEMENT OF FACTS

1. On June 1, 2006, the Louisiana Department of Economic Development (“LED”) and the Louisiana Governor’s Office of Film and Television Development (the “Film Office”) approved the “Production” as a “state-certified production” as defined in La. Rev. Stat. 47:6007(B)(5).
2. Motion Picture (MP), a motion picture production company, was formed as a limited liability company under the Louisiana Limited Liability Company Law, La. Rev. Stat. 12:1301, et seq., on June 1, 2005. MP was formed in order to produce motion pictures in Louisiana, including the “Production”. Since the date of its formation and at all relevant times described herein, MP (a) has maintained, and will continue to maintain, a registered office in the State of Louisiana; (b) has been, and will continue to be, domiciled and headquartered in Louisiana; (c) has been, and will continue to be, engaged in the business of producing nationally distributed motion pictures, videos, television series, or commercials intended for theatrical release or television viewing. MP is not owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the State of Louisiana or a loan guaranteed by the State of Louisiana, nor is MP owned, affiliated, or controlled, in whole or in part, by any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

3. The sole member of MP is Pictures. For federal and state tax purposes, Pictures and MP are classified as entities that are disregarded as entities separate from their owners.
4. Pictures was formed as a limited liability company under the Louisiana Limited Liability Company Law, La. Rev. Stat. 12:1301, et seq., on August 8, 2005, for the purpose of investing in MP.
5. The sole member of Pictures is Pics Television Productions, Inc. ("Pics"), a Delaware corporation.
6. Pursuant to La. Rev. Stat. 12:1301, et. seq., MP and Pictures operated without written operating agreements. All of the Louisiana Motion Picture Investor Tax Credits that have been earned by Pictures shall flow through to Pics at the end of Pictures' tax year.
7. At this time, Pictures is a single-purpose entity that is not expected to have any business activities other than investing in productions, including the Production. Pics is in the business of, among other things, producing motion pictures.
8. Pics intends to sell or otherwise transfer all or a portion of the Investor Tax Credits generated in connection with the Production to one or more persons.
9. For example, Pics is undertaking the following transaction involving Sell Your Credits Corporation ("SYC"):
 - a. Pics has or will enter into a written agreement (the "Purchase Agreement") with SYC providing for SYC's purchase at one or more closings of all the Investor Tax Credits earned by Pictures. The ultimate number of Investor Tax Credits to be purchased by SYC at the closings will depend on MP's actual expenditures, as certified by LED and the Film Office. At each closing, the Purchase Agreement will require SYC to pay Pics an agreed upon purchase price for the Investor Tax Credits.
 - b. In calendar year 2006, Pictures will contribute to MP cash and a Pictures' Note. The amount of cash contributed and the principal amount of the Pictures' Note are to equal the estimated total Production budget. MP will spend Pictures' calendar year 2006 investment on Production-related expenses in calendar years 2006 and 2007 but in any case within 24 months of the date of such investment. The Investor Tax Credits earned in connection with the Production will be certified as free from recapture in one or more Investor Tax Credit Certification Letters issued over the duration of the Production and possibly in more than one calendar year. Therefore, the Purchase Agreement will provide for one or more closings to

coincide with the certifications of the Investor Tax Credits earned in connection with the Production.

10. SYC does not currently expect to be able to use the Investor Tax Credits that it will purchase from Pics to offset any of its Louisiana income or franchise tax liability. Accordingly, SYC expects to sell, or otherwise transfer all or a portion of the Investor Tax Credits to one or more persons.
11. Pics uses a June 30 fiscal year, and SYC uses a calendar year as its tax year for federal and state tax purposes.
12. Some, if not all, persons who will purchase Investor Tax Credits from Pics will do so after Pictures has made some, or all, of its capital contributions to MP, after MP has expended some, or all, of those contributions on Production-related expenses (either directly or by repaying loans used to fund such expenses) and after the Production has been certified and completed.
13. Neither Pictures nor SYC, other than through direct and indirect investments in MP, has ever been, or is currently engaged in the business of producing films, videos, television series, or commercials of any kind or has ever produced a film, video, television series, or commercial of any kind.
14. Upon the sale or transfer of the Investor Tax Credits, the seller/transferor and the transferee of the Investor Tax Credits will submit to the Louisiana Department of Revenue (LDR) and the Film Office the notification of transfer required by La. Rev. Stat. 47:6007(C)(4)(b).

FREQUENTLY ASKED QUESTIONS

1. What is a “motion picture production company” for purposes of the Investor Tax Credit?

A motion picture production company is defined in La. Rev. Stat. 47:6007(B)(4) as a company engaged in the business of producing nationally distributed motion pictures. However, a motion picture production company cannot be a company owned, affiliated, or controlled, in whole or in part, by any company or person that is in default on a loan made by the state or a loan guaranteed by the state, any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

2. Who determines whether a production qualifies as a state-certified production?

Louisiana Revised Statutes 47:6007 gives the Film Office and LED, jointly, the exclusive authority to determine whether a production qualifies as a state-certified production.

3. Who is eligible to earn the Investor Tax Credit?

Any investor, including a tax exempt entity, that is not a motion picture production company is eligible to earn the Investor Tax Credits under La. Rev. Stat. 47:6007(C)(1) and is entitled to claim and use any Investor Tax Credits that it earns by virtue of its investments in a motion picture production company in accordance with La. Rev. Stat. 47:6007(C)(3)(c).

4. Is the Investor Tax Credit transferable?

La. Rev. Stat. 47:6007(C)(4) provides that an investor or subsequent purchaser is eligible to transfer any Investor Tax Credits that it earns as long as such credits have not been previously claimed by any taxpayer against Louisiana income tax.

5. Can the contribution of an interest-bearing note constitute an investment and, if so, what is the value of the investment?

For purposes of La. Rev. Stat. 47:6007(C)(1), the contribution of a note bearing a market rate of interest will constitute an investment on the date of contribution in an amount equal to the original principal amount of the note only if payment of the entire principal amount of any such note can be demanded at any time by the production company and if such principal amount is immediately available (subject to a reasonable payment deadline such as five business days) upon any such demand. If a note does not meet these criteria, then the amount of the investment will be deemed to be the fair market value of the note on the day it is contributed to the production company.

6. What contributions constitute an investment after the production is completed?

After a production is completed, the only amounts that will be considered an “investment” will be amounts that do not exceed the bona fide debt or other outstanding obligations of the motion picture production company related to the state-certified production. Investments made in a motion picture production company for the production of a state-certified production during pre-production, production, or post-production, will be presumed to be in keeping with the objectives of the statute which include attracting private investment for the production of motion pictures, videotape productions, and television programs. Once production is completed, then to the extent that the motion picture production company does not have bona fide debt or other outstanding obligations related to the state-certified production, any funds contributed will not be considered an “investment” for purposes of the Investor Tax Credit.

7. What is the “base investment”?

Base investment is defined as the actual investment made and expended by a state-certified production in the state as production expenditures incurred in this state that are directly used in a state-certified production or productions.

8. Who determines whether funds were properly expended with respect to a state-certified production prior to issuing an Investor Tax Credit Certification Letter?

Prior to any certification of expenditures of the state-certified production, the motion picture production company shall submit to the Film Office a cost report of production expenditures audited and certified by an independent CPA as determined by rule. The Film Office shall review the production expenses and will issue an Investor Tax Credit certification letter indicating the amount of the Investor Tax Credits certified for the state-certified production.

9. Will LDR accept the Investor Tax Credit certification letter issued by LED and the Film Office?

LDR acknowledges and agrees that following the issuance of the Investor Tax Credit Certification Letter by LED and the Film Office, LDR will not initiate any action against the motion picture production company, the investor, partners or member of the investor or the transferee as the case may be, under La. Rev. Stat. 47:6007(E), 47:6007(F), or otherwise, to recapture, disallow, recover, reduce, decertify, require repayment of, require forfeiture of, or otherwise limit the use of the Investor Tax Credits allocated or transferred to a Transferee, as the case may be, unless (1) LDR determines that motion picture production company, investors, members or partners of the investors or one or more Transferees claimed more Investor Tax Credits than LED and the Film Office certified by issuance of one or more Investor Tax Credit Certification Letters, or (2) the motion picture production company, investors, members or partners of the investors or the Transferee committed fraud or made a material misrepresentation when, in each case, claiming or utilizing the Investor Tax Credits.

In the case of the motion picture production company, investors, members or partners of the investors or one or more Transferees claiming more Investor Tax Credits than LED and the Film Office certified by issuance of the Investor Tax Credit Certification Letter(s), any action to disallow, recover, reduce, or otherwise limit the use of the Investor Tax Credits will be directed solely against the person claiming more Investor Tax Credits than LED and the Film Office certified.

In the case of fraud or material misrepresentation when claiming or utilizing the Investor Tax Credits on an income or franchise tax return, any recapture action will be directed solely against the person committing the fraud or making the material misrepresentation.

10. What must occur if an investor wants to transfer its Investor Tax Credits?

Every production that is approved by LED and the Film Office as a state-certified production is issued a unique identification number. If any Investor Tax Credits are transferred or sold, then a copy of the credit certificate or certificates evidencing such Investor Tax Credits transferred or sold must be submitted as part of the notice required by La. Rev. Stat. 47:6007(C)(4)(b). The notification shall include the transferor's Investor Tax Credits balance prior to transfer, a copy of any Investor Tax Credit certification letter(s) issued by the Film Office and LED, the name of the state-certified production, the transferor's remaining Investor Tax Credits balance after transfer, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate, price paid by the transferee to the transferor, in a case where the transferor is a state-certified production or state-certified infrastructure project for the Investor Tax Credits, and any other information required by the Film Office, or LDR. The notice requirement of La. R.S. 47:6007(C)(4)(b) will be met if, in lieu of the credit certificate or certificates evidencing the Investor Tax Credits sold or transferred, the transferor and the transferee submit a copy of the Investor Tax Credit Certification Letters that include the unique identification number associated with the state-certified production.

APPLICAION OF THE CREDITS

1. Can a return be amended to apply an Investor Tax Credit to a previous tax year if the income tax from that year is not currently due?

The receipt of an Investor Tax Credit earned or received by flow-through or transfer, in a tax year subsequent to the tax year in which the Investor Tax Credit was earned cannot be used to eliminate a tax liability from a previous year that has already been satisfied or is not currently due. Therefore, a taxpayer cannot amend a previous year return, apply the newly acquired credit and generate a refund with interest.

2. Can a return be amended to apply a Tax Credit to a previous year if an income tax liability is still outstanding from a previous year?

An Investor Tax Credit earned or received by flow-through or transfer, in a tax year subsequent to the tax year in which in the Investor Tax Credit was earned can be applied to any income tax liability that is still due for the year the credit was originally earned and still due for any year afterward until the 10-year carry-forward period is over. Penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid. The date of payment is the date that LDR receives a return from a taxpayer on which the Investor Tax Credits are claimed.

3. Can a credit be used to eliminate any penalties and interest on overdue income tax liabilities from previous years?

An Investor Tax Credit, in the hands of the taxpayer that earned the credit or received it by flow-through, cannot be used to eliminate any penalties and interest on overdue income taxes from prior tax years. However, an Investor Tax Credit that is purchased is treated as property and can be applied to penalties and interest on overdue income taxes from prior tax years. La. R.S. 47:1675(H)(1)(c). Penalties and interest will continue to accrue until the taxes on which such penalties and interest are accruing are paid. The date of payment is the date that LDR receives a return from a taxpayer on which the Investor Tax Credits are claimed.

4. Is the availability of the credit affected by the domicile or residence of the taxpayer?

Any Louisiana taxpayer may utilize Investor Tax Credit to offset their Louisiana tax liability regardless of their residence or domicile.

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<p>A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.</p>
